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IN THE

Supreme Court of the United States

..... Term, 1968

No. 416

JOHN A. EPLING,

Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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IN THE

Supreme Court of the United States

..... Term, 1968

No. ——

JOHN A. EPLING,

Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,

Respondent.

Petitioner herein, John A. Epling, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered June 19, 1968.

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported as Ohio State Bar Association v. Epling, 15 Ohio St. 2d 23.

STATEMENT OF JURISDICTION

The decree of the Supreme Court of Ohio was entered June 19, 1968, Motion for rehearing was denied by entry of the Supreme Court of Ohio dated July 10, 1968. A copy of the opinion rendered by the Supreme Court of Ohio is appended hereto identified as appendix A. A copy of the decree indefinitely suspending petitioner from the practice of law is appended hereto identified as appendix B. This case came before the Supreme Court of Ohio on Findings of Fact and Recommendations of the Board of Commissioners of the Supreme Court of Ohio which were certified to the Supreme Court of Ohio on January 9, 1968 and a

copy of said Findings of Fact and Recommendations is appended hereto identified as appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and this Court's rule 19 (a), inasmuch as the petitioner has been denied due process of law under Amendment XIV to the Constitution of the United States and his rights have been violated by admission of evidence obtained by unreasonable search and seizure in violation of Amendment IV to the Constitution of the United States and by admission of evidence in violation of the self-incrimination clause of Amendment V to the Constitution of the United States.

QUESTIONS PRESENTED

1. May an attorney be disenfranchised in state court proceedings by reason of the application of Canons 29 and 32 of the Canons of Professional Ethics to the banking practices of that attorney which the court concluded tended to bring the legal profession into disrepute in view of the indefinite, vague and uncertain language of said Canons?

2. Where under Rule of State Supreme Court which provides that an attorney who has once received a public reprimand shall upon being found guilty of subsequent misconduct receive at least an indefinite suspension and said Rule provides that Commissioners hear and report findings and make recommendation to the State Supreme Court, may an attorney be indefinitely suspended when the fact of such prior reprimand and the reason for it was made known to the Commissioners who heard and reported on matters in connection with charges of subsequent misconduct?

3. Where a state bar association prior to any proceeding obtains the personal banking records of an attorney from banking in which such accounts are maintained, without

the knowledge, consent or permission of such attorney, may such records be introduced in evidence in subsequent disciplinary proceeding involving alleged misconduct of said attorney?

4. Where under Rule of the Supreme Court of Ohio a seventeen (17) member Board of Commissioners is appointed to hear and make findings and recommendations respecting alleged misconduct of attorneys, may such hearing be conducted before only three (3) members when said three (3) members do not report directly to the Supreme Court of Ohio but instead report to the remaining members which do not hear either side to the controversy and which in turn report to the Supreme Court of Ohio?

APPLICABLE CONSTITUTIONAL PROVISIONS, RULE OF COURT, AND CANONS OF PROFESSIONAL ETHICS

This case involves the following:

Constitutional Provisions

1. Amendment IV to the Constitution of the United States more particularly dealing with "unreasonable searches and seizure", which is appended hereto as Appendix D.
2. Amendment V to the Constitution of the United States more particularly dealing with "self incrimination", which is appended hereto as Appendix E.
3. Amendment XIV to the Constitution of the United States more particularly Section 1 thereof, which is appended hereto as Appendix F.

Rule of Court

1. Applicable provisions of Rule XVIII of the Rules of the Supreme Court of Ohio which are appended hereto as Appendix G.

Canons of Professional Ethics

1. Canons 29 and 32 of the Canons of Professional Ethics which are appended hereto as Appendix H.

STATEMENT OF THE CASE

Under Rule XVIII of the Rules of the Supreme Court of Ohio charges were filed against the Respondent covering seven (7) specifications of alleged violations of certain of the Canons of Professional Ethics. The trial was before a panel of three members of the Board of Commissioners of the Supreme Court of Ohio beginning January 5, 1967. The Findings, Conclusions and Recommendation of said Board of Commissioners was certified to the Supreme Court of Ohio on January 9, 1968.

The said Board made conclusions as to the seven (7) charges and in said conclusions found violations of Canon 11 as to charge number 1 and 3 and violations of Canons 29 and 32 as to charges 3, 4, 5, 6, and 7. Said Findings of Fact and Recommendation of the Board was filed with the Board on December 1, 1967.

The charges filed by the Relator, Ohio State Bar Association, with said Board recited of a prior public reprimand issued to Respondent by the Supreme Court of Ohio on December 5, 1962 and said recital included a quotation from said Board in the prior case which read as follows:

> "... that Respondent by the careless handling of business affairs of his office as an attorney-at-law in the handling of collections and his negligence in accounting therefor and by his persistent habit of writing and uttering checks on his various checking accounts, both personal and business, knowing that he did not have funds sufficient to cover them, has been guilty of practices tending to bring the legal profession into disrepute contrary to canons 29 and 32 of the Canons of Professional Ethics."

The above quote was set forth verbatim by said Board in

this Case in its Recommendation and after reciting the above violation in its Recommendation the Board stated as follows:

> "In view of this previous reprimand and the foregoing Finding and Conclusions in respect to charges 1, 3, 4, 5, 6, and 7, the Board finds that the respondent has been guilty of misconduct as defined in Paragraph 5 (a) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio."

Paragraph 5 (a) of said Rule XVIII defines misconduct and reads in toto as follows:

> "Misconduct shall mean any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, or the commission or conviction of a crime involving moral turpitude."

Evidence was obtained by Relator, Ohio State Bar Association, and used at the trial herein from banks pertaining to respondent's own personal and business checking accounts. Said records were obtained by the Relator without the knowledge or consent of Respondent.

The substantial part of the case related to the practice of petitioner of issuing post dated checks to pay legal book publishers and certain other creditors with petitioner having explicit understandings with either such creditors or with the banks that should there not be sufficient funds for any particular check that either the bank would notify petitioner who would cover such check or the organization to whom such check was issued could simply add that amount to petitioner's account and re-bill petitioner. The evidence revealed no financial loss to those to whom checks were issued.

The charges in connection with petitioner's checking practices alleged that they tended to bring the legal pro-

fession into disrepute. There was no evidence that such practices had put either the petitioner or the legal profession into disrepute and the evidence, including testimony from the banks on whom such checks were drawn and certain creditors to whom such checks were issued, was to the contrary. The Conclusion of "tending to bring the legal profession into disrepute" was drawn by the commissioners who reported to the Court.

While the trial of the case was before a hearing panel of three (3) members of a seventeen (17) member Board of Commissioners, pursuant to Court Rule, the report to the Supreme Court of Ohio was by the full Board of Commissioners, fourteen (14) of whom did not hear the matter and before whom the petitioner had no opportunity for any presentation.

HOW FEDERAL QUESTIONS PRESENTED

Under Rule XVII of the Rules of the Supreme Court of Ohio, the Board of Commissioners provides a hearing panel of three (3) for matters charging an attorney with misconduct. The full Board of Commissioners then subsequently report to the Supreme Court of Ohio with opportunity at this stage for objections to the findings and or recommendation. It is clear that the Board of Commissioners has not power or authority to invoke penalties of public reprimand, suspension or permanent disbarment.

The federal questions were raised with the Supreme Court of Ohio, which in reality was the Court of first instance, by timely filing of Objections in said Court prior to hearing an oral argument. In addition, before oral argument to the Court, and with the Court's permission supplemental objections and brief in support were filed with the Supreme Court of Ohio. Such objections contained in the certified record of the Supreme Court of Ohio. The Supreme Court of Ohio in its decision, appended hereto, made

no reference to the constitutional questions except Question 2 to which the Court only commented that there was no prejudice to petitioner.

REASONS WHY THIS WRIT SHOULD BE GRANTED

As to Question 1.

Canons 29 and 32 of the Canons of Professional Ethics are so indefinite, uncertain and vague that their application has deprived petitioner of due process of law under Amendment XIV to the Constitution of the United States.

Rule XVIII of the Rules of the Supreme Court of Ohio establishes the disciplinary proceduary to be followed in cases involving charges of misconduct involving attorneys. Subparagraph (a) titled "Misconduct" defines that term and we quote that definition from said Rule XVIII as follows:

> "Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, *or any violation of the Canons of Professional Ethics* or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the Commission or conviction of a crime involving moral turpitude." [Emphasis added]

Here there was no criminal conviction. Violation of Canons 29 and 32 were charged based upon check writing practices of petitioner which were not even alleged to be criminal. The relator, The Ohio State Bar Association had previously brought charges against the petitioner D.D. No. 35, alleging the violation of Section 1115.23 of the Revised Code of Ohio which requires that intent to defraud be an element thereof. The Board of Commissioners and the Court in that instance did not find that element present and hence did not find the commission of a crime. How-

ever the Court did find a violation there of Canons 29 and 32 which the petitioner had not even been charged with and which were not even added during the hearing thus making that case fall within the purview of *In re Ruffalo*, (1968), 36 L.W. 4284.

Thus the Relator, the Ohio State Bar Association, in this case simply took what it deemed the easy road and charged only the violation of Canons 29 and 32. In the charges, finding and conclusions of the Board of Commissioners and opinion of the Supreme Court of Ohio the only language used from Canons 29 and 32 is that "such practices tended to bring the legal profession in to disrepute." This being the conclusion drawn by the Board and the Court, though no such evidence of the practices of the petitioner having "tended to bring the legal profession into disrepute is to be found in the record. Thus the Board and the Court used its own subjective processes to arrive at this conclusion.

At this juncture we urge this Court to simply read Canons 29 and 32 of the Canons of Professional Ethics which are set forth in toto in appendix H.

The language of Canons 29 and 32 is commendable as a statement of goals or objectives. But rather than a definite, certain and specific statement of conduct with prohibitions or required standard, these particular Canons read as would a prefacing or introductory statement to the other Canons which generally are of a considerably more definitive character.

Under the auspices of the Ohio State Bar Association Foundation, Professor Oliver Schoeder, Jr., wrote "Lawyer Discipline: The Ohio Story" published in 1967. At page 17 he discusses the formation of a committee in 1952 of the Ohio State Bar Association to draft a rule for disbarment procedures. At page 18 Professor Schroeder quotes from

the Presidential address to the Ohio State Bar Association relating to the proposed rule in part as follows:

> "Restating in clear and concise terms the standards of conduct — standards as high as we all know they ought to be — required of every member of the Bar, whether he holds judicial office or is engaged in private practice and eliminating in the process all canons of conduct which no one has any intention of enforcing and therefore constitute nothing but *beautiful prattle*;"
>
> [Emphasis added]

Notwithstanding this instruction all of the Canons including Canons 29 and 32 remain in force and operative today.

That the need for revision and definition continues is noted in the words of Mr. Justice William J. Brennan, Jr. writing in *American Bar Association Journal*, Vol. 54, February 1968, where he states as follows at page 122:

> "Mr. Justice Stone's warning thirty-three years ago was prophetic: 'Our Canons of Ethics for the most part are generalizations designed for an earlier era.'
>
> "Not only has little been accomplished within the profession to prepare to meet the challenge of today's problems, but the obsolescence of our code of ethics and institutions has dramatically compounded."

Thus, the Relator, the Ohio State Bar Association, chose to charge violation of Canons 29 and 32 because they are literally broad enough to cover everything. Those Canons are so broad and so general and so subject to subjective interpretation that they have become the "catch all" Canons. If an act does not meet all the more specific elements of the other Canons or of criminal conduct then they simply charge on violation of Canons 29 and 32.

The point in the case at hand is well stated in *United States v. Reese*, 92 U.S. 214 from which we quote from page 22 as follows:

> "It would certainly be dangerous if the legislative could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."

The extent that Canons 29 and 32 have been used in disciplinary cases in Ohio as of the writing of "Lawyer Disciplinary: The Ohio Story" is found in the statistical review therein and reveals that of 106 cases, 37 cases involved Canon 29, and 32 cases involved Canon 32. The fish "net" is indeed large and effective. The size of the net must now be of grave concern.

This question as to the application of Canons 29 and 32 is an important and substantial question relating to due process of law being afforded all members of the bar. The application of Canons 29 and 32 herein by the Supreme Court of Ohio is analogous to decisions by this Court in declaring statutes or rules unconstitutional and as such is a denial of due process of law which this Court has repeatedly afforded attorneys in disciplinary cases.

The cases are clear that whether the practice of law is termed a right or a privilege, revocation or disciplinary proceedings must afford due process of law under Amendment XIV to the Constitution of the United States. *Spevack v. Klein*, 1967, 87 S. Ct. 625, 385 U.S. 511. *In re Schlesinger*, 1961, 172 A 2d 835, 404 Pa. 584. For review of cases involving "Suspension or revocation of medical or legal professional license as violating due process—federal cases" see 98 L. Ed 851 annotation where at page 852 we quote:

> "All the cases dealt with herein support (most often inferentially, but nonetheless clearly) the view that due process of law plays a fundamental part in situations involving the suspension or revocation of legal or medical licenses. It is not the issue of whether a lawyer or medical practitioner is entitled to due process under these circumstances that has been the subject of judi-

> cial concern, but, instead, whether, as to both matters of substance and matters of procedure, he has, in fact, been afforded such due process."

See also cases relating to admission to the Bar. *Schware v. Board of Bar Examiners of State of N. M.*, 1957, 77 S. Ct. 752, 353 U.S. 232, 64 A.L.R. 2d 288; *Hackin v. Lockwood*, 361 F 2d 499 (1966).

Under the annotation in 98 L. Ed 851, *supra*, section 2 (b), "Vagueness of statutory language", we quote from page 854:

> "If a statute providing for the suspension or revocation of a medical or legal professional license is to meet the test of substantive due process it must be certain in its terms."

More specifically in point is *Czarra v. Board of Medical Supervisors*, 1905, 25 App DC 443, and review of Canons 29 and 32 in light of this decision is invited. There the statute stated as grounds for revocation "Unprofessional or dishonorable conduct." Note the analogy of the language of the charges and conclusions herein to the language of Canons 29 and 32. The Syllabus of the Court, particularly numbers 5 through 10, inclusive, sets forth clearly and in excellent fashion the Court's reasoning and we quote syllabus 7 and 10 as follows:

> "7. The test to determine whether a statute defining an offense is void for uncertainty is whether the language may apply not only to a particular act about which there can be little or no differences, thereby devolving upon the court the exercise of arbitrary power of discriminating between the several classes of acts."
>
> "10. So much of the act of Congress of June 3, 1896, 29 Stat. at L. 198, chap. 313, as authorizes the board of medical supervisors in this District to revoke the license of medical practitioner upon conviction of 'unprofessional or dishonorable conduct', independently of other offenses for which a license may be revoked, is

> void for uncertainty; it being a matter of opinion whether any given act constitutes such conduct; and an order of the board is void which revokes the license of a physician on a complaint charging him with such conduct in that he circulated obscene matter."

The test as to certainty is applied to the statute or in this case Canons 29 and 32, rather than with reference to particular conduct. Thus, the court stated in *Lansetta v. New Jersey*, 1939, 396 U.S. 455 at page 453:

> "It is the statute, not the accusation under it that prescribes the rule to govern conduct and warns against transgression."

In the *Lansetta* case the court cited *Connally v. General Construction Co.*, 269 U.S. 385 and quotes from page 391 of the *Connally* case:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

As to Question 2.

Paragraph (7) of said Rule XVIII has to do with the effect of a prior discipline upon a finding of subsequent misconduct. The last sentence of said paragraph (7) we quote as follows:

> "A person who has been publicly reprimanded for misconduct, *upon being found guilty of subsequent misconduct,* shall be suspended for an indefinite period from the practice of law or permanently disbarred depending upon the seriousness of such misconduct."
>
> (Emphasis added)

In this case the Panel of the Board of Commissioners and said Board had before them formally the fact of a prior reprimand and this fact was set forth in the charges filed by the Relator. That this fact influenced their decision on the merits in connection with the present charges is clearly reflected in the Board's Recommendation where they stated beginning at page 9:

> "In view of this previous reprimand and the foregoing Findings and Conclusions in respect of charges 1, 3, 4, 5, 6 and 7, the Board finds that the respondent has been guilty of misconduct as defined in Paragraph 5 (a) of the Rules XVIII of the Rules of Practice of the Supreme Court of Ohio."

It should be remembered that at this point in these proceedings there had been no finding of "guilty of subsequent misconduct" by this Court. Thus, the Recommendation of said Board is on its face contrary to Rule XVIII, Paragraph (7).

Even more importantly is the prejudicial effect the prior reprimand could not have helped but have on said Panel and said Board in its evaluation of the merits of the instant case.

An important, serious and substantial constitutional question is raised under the due process clause of Amendment XIV to the Constitution of the United States. In upholding the consideration by the Board herein of the prior reprimand before there was an actual determination of misconduct in the instant case the Supreme Court of Ohio has decided the constitutional question in a way not in keeping with the decision of this Court in *Spencer v. Texas*, 385 U.S. 554.

The Supreme Court of Ohio in its decision herein, stated in essence that it found no prejudice to petitioner. How does one expect to find prejuidce? Certainly not by admissions from the triers of fact that they were prejudiced.

The point is that petitioner was entitled to the protection from any prejudicial fact as herein, at least until the merits of the controversy were decided.

The *Spencer* case involved Texas Habitual Criminal Statutes and Justice Harlan in writing the majority opinion stated at page 556:

> "... the essence of those procedures was that, through allegations in the indictment and the introduction of proof respecting a defendant's past convictions, the jury trying the pending criminal charge was fully informed of such previous derelictions, *but was also charged by the court that such matters were not to be taken into account in assessing the defendant's guilt or innocence under the current indictment.*"
>
> (Emphasis added)

The Court split 5-4 with majority holding that defendants were not denied due process when evidence of prior convictions were admitted. However, the Court throughout the majority opinion placed considerable if not controlling emphasis on the limiting instructions given by the courts to juries under this procedure. Justice Harlan states at page 561:

> "The defendants' interests are protected by limiting instructions, see *Giacome v. State, supra,* and by the discretion residing with the trial judge to limit or forbid the admission of particularly prejudicial evidence even though admissible under an accepted rule of evidence."

In the case at issue, there were no limiting instructions or considerations. Nor do we think that because lawyers, rather than lay jurors, were the triers of fact here should make a particle of difference. At the risk of being trite, but accurate, we must say that lawyers must be just as susceptible to this kind of prejudicial evidence as others are, particularly where not even subject to the restrictive admonishments as were issued in the Spencer case. Nor

should the fact this is a disciplinary case afford the lawyers lesser protection than in a criminal case. See *Spevack v. Klein, supra.*

While we have pointed out the distinguishing feature of the instant case to the majority view in *Spencer* we urge this Court's examination of the dissenting opinion in *Spencer* of Mr. Chief Justice Warren. We quote Chief Justice Warren at page 570:

> "It seems to me that the use of prior convictions evidence in these cases is fundamentally at odds with traditional notions of due process, not because this procedure is not the nicest resolution of conflicting but legitimate interests of the State and the accused, but because it needlessly prejudices the accused without advancing any legitimate interest of the State."

Justice Brennan in separate dissent states at page 588:

> "It seems to me that the Constitutional error here involved undermined 'the very integrity of the fact-finding process.' *Linkletter v. Walker,* 381 U.S. 618, 639, and I would therefore apply the rule retroactively."

Those words speak more relevantly and eloquently than any we can hope to use.

Further, and making the question here all the more significant and important is the fact that the prior reprimand resulted from findings of the Board of Commissioners that petitioner was in violation of Canons 29 and 32 when in fact he was not even charged with their violation and had no notice of same in that case. Under this Court's decision in *In re Ruffalo, supra,* decided in 1968, petitioner was deprived of due process of law in that case. Thus the use of that prior reprimand additionally compounds the violation of petitioner's rights. We quote from the Board's Findings in the prior case as follows:

> "*Although not made the subject of a specific charge,* the Board further finds that Respondent by the care-

less handling of the business affairs of his office as an attorney at law in the handling of collections and his negligence in accounting therefor and by his persistent habit of writing and uttering checks on his various checking accounts, both personal and business, knowing that he did not have funds sufficient to cover them, has been guilty of practices tending to bring the legal profession into disrepute contrary to Canons 29 and 32 of the Canons of Professional Ethics."

[Emphasis added]

As to Question 3.

The record clearly supports that as regards charges 5 and 6, records of Respondent's own personal, business and trust checking account records in the Ohio Valley Bank and the Commercial and Savings Bank, Gallipolis, Ohio, were placed in evidence through bank personnel under subpoena duces tecum. As relates to these charges no other evidence was introduced by the Relator. It is clear that the information to even formulate these charges was obtained not only prior to hearing but prior to charges even being filed and this information consisted of said bank records obtained by Relator without the knowledge, consent or permission of the Respondent. There was no opportunity for Respondent to protest or raise objection to Relator's obtaining and/or reviewing said records.

Two serious constitutional questions are raised here. First, we think *Spevack v. Klein, supra,* applies here. In *Spevack* the court held that self-incrimination of the Amendment V was absorbed in Amendment XIV to the United States Constitution and extends to lawyers and should not be watered down by the dishonor of disbarment and deprivation of livelihood as penalty. The Court overruled *Cohan v. Hurley,* 366 U.S. 117. Further, the Court stated at page 515:

"In this context 'penalty' is not restricted to fine or imprisonment. It means, as we said in *Griffin v. Cali-*

> *fornia,* 380 U.S. 609, the imposition of any sanction which makes assertion of the 5th Amendment privilege 'costly' ".

The *Spevack* case was decided January 16, 1967, which was subsequent to the hearing herein. Further, in *Spevack* the court was dealing with a "required records" rule having public aspects though that specific question was not before the court.

Under *Spevack* we believe it clear that the Respondent need not have testified but further had the right to refuse or deny the review of Relator of said bank records in possession of the respective banks and in fact such records were obtained and/or reviewed without even his knowledge.

Moreover, the bank records constituted an invasion of privacy and were in violation of the Amendment IV to the Constitution of the United States. *Zimmerman v. Wilson,* (1936, CA 3d Pa) 81 F 2d 847. In the *Zimmerman* case, internal revenue issued summons with duces tecum clause for the bank to obtain taxpayers' bank records. The Court held an unreasonable search and the action of the bank in furnishing said records could not deprive taxpayer of constitutional protection against unreasonable search. The court stated at page 849:

> "And that right extends to the records of his transactions from unreasonable inspection and examination thereof by unwarranted governmental search."

Evidence obtained by search and seizure in violation of the Fourth Amendment is inadmissible in State Court as a matter of due process. *Mapp v. Ohio,* (1961) 367 U.S. 643, 6 L Ed. 2d 1081, 81 S. Ct. 1684.

As To Question 4.

The question here does not relate to the validity of the commissioner system as such. However, under Rule XVIII

of the Rules of the Supreme Court of Ohio, in particular paragraphs 10 and 14, the actual hearing is before 3 members of the Board of Commissioners who are charged to hear and take evidence and report to the full Board. The full Board of Commissioners is then charged to review and report to the Supreme Court of Ohio. In short, there is no provision for, nor was there here, any direct reporting by the panel members who heard this case to the Supreme Court of Ohio.

A further detailed look at this procedure reveals that under paragraphs 14 and 15 of said rule, as to penalties of public reprimand and above, the full Board certifies its findings of fact and recommendations to the Supreme Court. This Report has behind it the impetus and weight of the full membership of 17 and said Rule makes no provision for minority opinions. As a matter of fact in "Lawyers Discipline: The Ohio Story", *supra*, at page 136 we quote an interesting feature of the operation of said Rule:

> "On numerous occasions divisions of opinions were expressed orally but the Board abided by the majority vote and a formal dissenting opinion was not produced. In November, 1966, the first formal dissenting opinion in the long history of the Board's recommendation to the Supreme Court occurred."

This is the more interesting considering that there are 17 members of the Board. Their propensity for unanimity certainly exceeds that of any multi-member court or quasi-judicial body in our limited experience.

Now, continuing to look at said Rule and its application, there is no provision or opportunity for either side, Relator or Respondent, to make any kind of objection to the report of the three member panel. There is no provision or opportunity for either side to make any presentation orally or otherwise to the full Board and thus no opportunity to raise questions of law or fact or to in any way point to the de-

ficiencies of the record. Indeed, the report of the Hearing Panel to the Board is not even available for review by either party prior to its submission to the Board.

Thus, the Review called for in said Rule, paragraph 14, is a review without any party representation whatsoever. The result, as in this case, is that Respondent is faced with a recommendation of the full 17 member Board of which 14 did not hear the case and of which 14 heard no presentation by or on behalf of the Respondent. Any presentation was by the three member Hearing Panel.

Further, to the best of our knowledge, there was only one transcript of the proceeding available for the Entire Board and much less than 17 briefs that were filed with the Panel for the Board's review. We do not know how much in advance of the Board's meeting for discussion on this case that the Findings and Recommendations of the Hearing Panel were available. However, we do know that the Board met at 1:30 P.M. on December 1, 1967, to consider this case among several others. We know also that the fully prepared, typed and signed Findings and Recommendations of said Board were stamped as being filed on December 1, 1967.

Thus, not only are serious questions raised as to the extent and thoroughness of the Board's review, but as well the total lack of opportunity for Respondent to raise questions at the review stage.

Those cases we are able to find with respect to Commissioners' findings involved direct reporting to the court by the Commissioner or Commissioners who themselves had actually personally heard the evidence and could make first hand evaluation. Additionally, our study of cases providing for review systematically reveal that throughout our entire judicial system review contemplates representation and presentation at the review stage itself. Our inability to find

precedent to the contrary, we believe supports the position taken herein.

The absence of review in the fullest and usual manner and method and the justifiable inference drawn from the record as to the limited extent of review has deprived Respondent of due process of law.

CONCLUSION

This case presents an ideal opportunity for the Court to clarify the question of rights of lawyers in connection with the application of Canons 29 and 32 of the Canons of Professional Ethics and the need for such clarification is we think clear from even a casual reading of those Canons. The need for such clarification is demonstrated by the extent of the application of those Canons as herein.

Additionally important questions pertaining to the application of the Ohio disciplinary rule and the failure to provide lawyers with the same constitutional safeguards as others cries out for review.

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APPENDIX "A"

Ohio State Bar Assn. v. Epling, 15 Ohio St. 2d 23.

Attorneys at law — Misconduct — Acts warranting suspension from practice for indefinite period.

(D. D. No. 83 — Decided June 19, 1968.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

On the fifth day of December 1962, this court administered a public reprimand to the respondent, John A. Epling, based upon a report of the Board of Commissioners on Grievances and Discipline in which, in part, it was found that respondent had been careless and negligent in the handling of the business affairs of his office as an attorney at law; in collections, and accounting therefor, and "by his persistent habit of writing and uttering checks" knowing that he did not have sufficient funds on deposit "to cover them."

The matter now before the court resulted from seven charges of alleged professional misconduct of respondent filed by the Ohio State Bar Association with the Board of Commissioners on Grievances and Discipline for investigation and report. A summary of the charges and findings of the board follows:

Charge No. 1. On or about May 12, 1963, a client employed respondent to collect an account of $53.58. The respondent collected the account in full on November 18, 1963. Respondent failed to account to his client, or make any report to his client. In February 1965, the client forwarded the account to a collection agency and suit was filed. It was not until then that the client learned that respondent had already collected the account. The suit was dismissed.

Though urged by the relator to settle the account with

his client, respondent failed and refused to make any accounting until two days before the board commenced the hearing of these proceedings.

The board found that Charge No. 1 was supported by the evidence and that the respondent was in violation of Canon 11 of the Canons of Professional Ethics which reads:

"Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly * * *."

Charge No. 2. The board dismissed this charge by reason of conflict in the evidence.

Charge No. 3. On or about December 1, 1964, respondent was retained to represent the administratrix of an estate. Respondent arranged for the probate of the will and the appointment of the executrix of the estate. Thereafter respondent transferred funds of the decedent into an estate account, paid certain claims against the estate, distributive shares and respondent's attorney fees. Respondent failed to file any other papers required by law to complete the administration, nor did he do anything further to assist in closing the estate. On January 14, 1966, the respondent was discharged as attorney for the estate and the necessary work was completed by others. Respondent appeared to disregard repeated requests by the court to complete his duties for which he had already been paid. The board found such conduct to be in violation of Canons 11, 29 and 32 of the Canons of Professional Ethics.

Charge No. 4. The conduct of respondent was quite similar in this charge to his conduct in the previous charge. Respondent was retained to advise and assist the executor of an estate in the Probate Court of Gallia County. Respondent assisted the executor in the preparation and filing of the inventory and appraisement, schedule of claims and application to determine inheritance tax and the entry

determining said tax, but failed to close the estate for over two and one-half years, although the executor had paid respondent the amount of the tax and attorney fees in full. The Probate Court had repeatedly urged him to close out the estate, but to no avail. Not until the commencement of these proceedings before the board did he finally finish the administration of the estate.

The board found that the conduct of the respondent under this charge was in violation of Canons 29 and 32 of the Canons of Professional Ethics.

Charges Nos. 5, 6 and 7 involve the drawing and issuing of 209 checks by the respondent and issued by him when he knew that he did not have sufficient funds in his bank to honor them. These checks were issued in the period of time between May 14, 1963, and December 15, 1966. Respondent contended that these checks were post-dated and delivered with the understanding that he would immediately place funds in the bank to cover such checks. It was established that such a procedure was not proper and was in violation of banking regulations. The board found that a substantial number of these checks were eventually dishonored for failure to have sufficient funds to pay them.

The board concluded that such widespread and long continued habit of issuing and uttering worthless checks, as well as the other misconduct of the respondent, tended to bring the legal profession into disrepute within the meaning of Canons 29 and 32 of the Canons of Professional Ethics.

The respondent presented little or no defense other than flimsy excuses for his failure to report collections to his clients and for his failure to perform with reasonable promptness services for which he had already been paid.

Mr. Calvin W. Bristley, Jr., Mr. George D. Young and *Mr. John R. Welch,* for relator.

Mr. James C. Justice and *Mr. William P. Cherrington*, for respondent.

Per Curiam. Respondent complains that the Board of Commissioners on Grievances and Discipline was prejudiced against him by reason of the fact that the board was aware of the former reprimand administered to him by this court. A thorough search of the record discloses that there is no foundation whatsoever for such a contention. On the other hand, the record does disclose that in the single instance where there was a conflict of testimony—Charge No. 2—the board dismissed the complaint.

The objections to the recommendation of the board are overruled, the conclusions and recommendation of the Board of Commissioners on Grievances and Discipline are approved, and it is the judgment of this court that the respondent be, and he hereby is, suspended from the practice of law for an indefinite period.

Judgment accordingly.

TAFT, C. J., ZIMMERMAN, MATTHAIS, O'NEILL, HERBERT, SCHNEIDER and BROWN, JJ., concur.

APPENDIX "B"

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

The Supreme Court of the State of Ohio
Of the Term of January, 1968

To-wit: June 19, 1968

THE STATE OF OHIO, }
} SS
City of Columbus. }

THE OHIO STATE BAR ASSOCIATION,
Relator,

v. D.D. No. 83

JOHN A. EPLING,
Respondent.

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on January 9, 1968, recommending that respondent, John A. Epling, should be indefinitely suspended from the practice of law pursuant to Section 6 (b) of Rule XVIII of the Supreme Court of Ohio; and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and the respondent, John A. Epling, is indefinitely suspended from the practice of law.

The respondent, John A. Epling, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any

court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, John A. Epling, surrender his Certificate of Admission to Practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, John A. Epling, pay the costs of these proceedings taxed in the amount of One-thousand two-hundred eight dollars and ninety-six cents, ($1,208.96).

It is further ordered that the Clerk of this Court issued certified copies of this entry as provided for in Section 19, Rule XVIII of the Rules of Practice of this Court.

APPROVED: /s/ KINGSLEY TAFT, CHIEF JUSTICE

I, Thomas L. Startzman, Clerk of the Supreme Court of the state of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal 48.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 19th day of June, 1968.

THOMAS L. STARTZMAN, CLERK
/s/ SAM F. ADKINS, DEPUTY

APPENDIX "C"

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 114

IN RE: JOHN A. EPLING,

Respondent,

vs.

OHIO STATE BAR ASSOCIATION,

Relator.

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD

This matter came on to be heard before the duly appointed Hearing Panel of the Board of Commissioners on Grievances and Discipline on the pleadings, evidence, exhibits and argument of counsel, all of which have been duly and fully considered by the Board, and upon consideration thereof, the Board makes the following Findings of Fact and Recommendations:

FINDINGS OF FACT

The respondent is an attorney at law duly admitted to the practice of law in the state of Ohio, practicing in Gallipolis, Ohio, and environs.

CHARGE NO. 1

On or about May 12, 1963, respondent undertook to represent Spiegel, Inc., Chicago, Illinois, in the collection of a delinquent account of one Junior H. Prince residing in South Point, Ohio. The amount of the delinquent account was fifty-three dollars and fifty-eight cents ($53.58). Re-

spondent collected the account in full from the debtor on November 18, 1963. Respondent thereafter failed to account to his client, Spiegel, Inc., or to report to them in any way that the account had been collected. On February 3, 1965, Spiegel, Inc. forwarded the same account to a collection agency in Huntington, West Virginia, which instituted action against the debtor on February 17, 1965, in the court of the Justice of Peace in Huntington, West Virginia. Thereupon, Spiegel, Inc. was informed that the account had been paid in full to the respondent and the action against the debtor was dismissed. Spiegel, Inc., then made demand upon respondent for an accounting but respondent had failed to account to his client as of June 3, 1966.

CONCLUSION — CHARGE NO. 1

The facts in Charge No. 1 are undisputed. The evidence introduced further indicated that in addition to the demands made by the client for an accounting after February 1965, an investigator for the Ohio State Bar Association personally talked with the respondent about his failure to account to the client in March 1966 and in November 1966. Respondent failed or refused to account to his client until January 3, 1967, two (2) days before the commencement of this hearing and over three (3) years after respondent had collected the account. Charge No. 1 of the Complaint is therefore supported by the evidence and admissions of the respondent and by such conduct, respondent is in violation of Canon 11 of the Canons of Professional Ethics, to wit:

"Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly."

CHARGE NO. 2

On or about July 14, 1964, respondent was retained by

Mr. and Mrs. Carol Darst of Rutland, Ohio, to attempt to effect the release of their son Harold Darst from the Lebanon Correctional Institution, Lebanon, Ohio. Respondent was paid the sum of five hundred dollars ($500) at the time of his employment. The charge alleges that respondent did nothing to effect the release of Harold Darst and, although demand had been made by the clients, respondent had refused to refund any part of the money paid.

CONCLUSION — CHARGE NO. 2

The testimony of the client and the respondent are in direct conflict. The client stated that the respondent was retained and paid five hundred dollars ($500) to do certain specific things in an effort to have their son released from the Lebanon Correctional Institution and that respondent did nothing. Respondent, however, offered testimony to the effect that he was retained to investigate the possibility of getting the client's son released and that he did make a thorough investigation of the matter, did do considerable legal research concerning the matter and had many conferences with the clients concerning the case.

The testimony does indicate an apparent mutual misunderstanding between the clients and the respondent regarding what was to be done by the respondent in pursuit of this cause and the nature or purpose of the five hundred dollars ($500) retainer fee paid. The testimony further illustrates a lack of proper records on the part of the respondent to show the work done by the respondent and thus justify the fees paid to him but this does not prove that the effort was not expended by the respondent. In view of these factors, the Board finds that the evidence and testimony introduced does not substantiate Charge No. 2.

CHARGE NO. 3

On or about December 1, 1964, respondent was employed

by Vennie Clark Casto of Vinton, Ohio, to represent her in the administration of the estate of Vonnie Clark Hansen, deceased. The will of the decedent was admitted for probate by respondent in the Gallia County Probate Court on January 9, 1965, and Vennie Clark Casto was appointed executrix of the estate. Thereafter, respondent transferred funds of the decedent into an estate account, paid certain claims against the estate, distributive shares and respondent's attorney fee. Thereafter, respondent failed to file the other papers required by law to complete the administration of the estate or to do anything further to assist the executrix even though repeatedly and continuously urged and prompted to do so by the executrix and even the Probate Judge of Gallia County. On or about January 14, 1966, the respondent was discharged as attorney for the estate and the necessary work completed by others.

CONCLUSION — CHARGE NO. 3

The facts of the charge are not in dispute. The estate was not a difficult one to settle, consisting entirely of personal property, a 1962 automobile and four (4) bank accounts. According to the testimony of the probate judge, and the record of the Probate Court in Gallia County, the Inventory and Appraisement in this estate was not filed until January 1966. Shortly thereafter, the application to Determine Inheritance Tax and the Preliminary Notice were filed. The Schedule of Claims and the Final Account was finally filed in February and March 1966, having been prepared by the Probate Court for the executrix. There is nothing in the evidence or testimony to show why this estate could not have been closed within the statutory time. Respondent was continuously and repeatedly urged by the executrix and the judge, over a period of several months, to complete the administration of the estate. Although prom-

ising that he would complete the administration, respondent failed or refused to do so and even refused to surrender his file on the estate to the executrix until informed that the court would send the sheriff after the file (R. 68). In view of these factors, the Board finds that the neglect or inattention of the respondent to his client's business, the respondent's apparent disregard or disrespect of repeated requests by a court, and his failure to perform services for which he had already been paid constitute a violation of Canons 11, 29 and 32 of the Canons of Professional Ethics.

CHARGE NO. 4

On or about November 18, 1962, respondent was employed by one Thomas E. Jones of Crown City, Ohio, to represent him in the administration of the estate of Minnie G. Jones, deceased. Thereafter, respondent obtained the appointment of Thomas E. Jones as executor of the estate in the Probate Court of Gallia County, Ohio, and assisted the executor in the administration, including the filing of the Inventory and Appraisement, the Schedule of Claims and on June 20, 1964, the Application to Determine Inheritance Tax and Journal Entry Determining Tax. Thereafter, although repeatedly and continuously urged and prompted by the executor and the Probate Court to assist the executor in filing his Final Account and although respondent had collected his fee for his services as attorney for the executor on August 17, 1964, respondent failed and neglected to assist the executor in filing the Final Account and to close said estate.

CONCLUSIONS — CHARGE NO. 4

The facts of this charge are not disputed. In addition, the testimony indicated that the Final Account had been signed by the executor in August 1964, as well as a check in payment of the Inheritance Tax due. The Final Account

had been filed and the Inheritance Tax paid on the morning that this hearing commenced to wit: January 5, 1967, approximately two and one-half (2½) years after they were signed. The testimony further indicated that there was no reasonable excuse for respondent's failure to complete the administration of the estate within a reasonable time after the execution of the Final Account. The Board considers two and one-half (2½) years an extremely unreasonable length of time to administer a relatively simple estate, particularly in view of the continued and repeated requests of both the executor and the court to finish the same during that period.

In view of these facts, the Board finds that the neglect or inattention of the respondent to his client's business, the respondent's apparent disregard or disrespect of repeated requests by a court, constitute a violation of Canons 29 and 32 of the Canons of Professional Ethics.

CHARGE NO. 5

That from May 14, 1963, to December 15, 1966, respondent made, uttered, drew and delivered to various persons, and corporations, his checks for the payment of money drawn on the Ohio Valley Bank Company, Gallipolis, Ohio, and that on one hundred twenty-five (125) separate occasions, respondent's checks were not paid by the Ohio Valley Bank Company for the reason that respondent had insufficient funds in his account to cover said checks.

CONCLUSION — CHARGE NO. 5

The facts of the charge are supported by the evidence and testimony and admitted by the respondent. In explanation, respondent states that all of the checks herein involved were post-dated checks given to the particular payee with the admonition that if respondent should not have sufficient

funds available on deposit, the check would not be honored and the respondent would not be held in default by the payees. Respondent did present a representative of one payee book company who testified that the checks given the representative for his company were accepted on this condition. On the basis of the testimony offered, the Board cannot believe that all one hundred twenty-five (125) checks were issued or uttered upon this condition and must conclude that he did issue or utter checks in substantial numbers which were ultimately dishonored because respondent did not have sufficient funds on deposit to cover them when presented for payment. The Board finds that the respondent has violated Canons 29 and 32 of the Canons of Professional Ethics in that he has been guilty of practice which tend to bring the legal profession into disrepute.

CHARGE NO. 6

That from October 19, 1964, to May 9, 1966, respondent made, uttered, drew and delivered to various persons and corporations his checks for the payment of money drawn on the Commercial and Savings Bank, Gallipolis, Ohio, and that on seventy-five (75) separate occasions respondent's said checks were not paid by the Commercial and Savings Bank on the date submitted for the reason that respondent had insufficient funds in his account to cover said checks.

CONCLUSIONS — CHARGE NO. 6

The facts of this charge are substantiated by the evidence and testimony and are admitted by the respondent. In explanation, respondent testified that he had an arrangement with the bank whereby the bank would notify him when a check was presented for which he did not have sufficient funds in his account and that he would immediately arrange to deposit funds to cover the same. The assistant cashier of the Commercial and Savings Bank testified that

the practice of holding checks for money to be collected late was not proper under banking regulations. (R. 175). Disregarding the inherent danger of such an arrangement and the fact that it ignores proper banking procedures and regulations, the evidence and testimony clearly reflects the respondent's apparent disregard of proper business and professional standards in the conduct of his personal business affairs. The Board finds that such a course of conduct does tend to bring the legal profession into disrepute within the meaning of Canons 29 and 32 of the Canons of Professional Ethics.

CHARGE NO. 7

That on or about September 10, 1964, respondent executed and delivered to the Attorney General of Ohio a series of nine (9) post-dated checks drawn on the respondent's account in the Ohio Valley Bank Company, Gallipolis, Ohio, one check in the amount of eighty-two dollars and twenty-two cents ($82.22) dated October 10, 1964, and eight checks in the amount of fifty dollars ($50) dated the 10th day of each succeeding month to and including the date of June 10, 1965. Thereafter, in accordance with respondent's directions, each post-dated check was submitted for payment to the Ohio Valley Bank Company on the date due and all nine checks have been returned to the Attorney General marked returned unpaid for the reasons that respondent had insufficient funds. All nine checks remain unpaid as of the date of filing the Complaint. (The checks were in payment of two Student Loans totaling five hundred dollars ($500) obtained by respondent from Ohio State University in April 1956 and January 1957 and which became delinquent in March 1958. Failing to collect the loans the university had forwarded the claim to the Attorney General of Ohio on November 1, 1961. Respondent repaid fifty dollars ($50) of the total amount due on April 20, 1964.)

CONCLUSIONS — CHARGE NO. 7

The facts of the Charge are uncontroverted and are admitted by the respondent. Respondent again interposed the explanation that he told the representative of the office of the Attorney General, upon giving him the nine checks, that if the checks were not honored when presented for payment, respondent was not to be held in default. However, Mr. Richard Rypma, investigator for the office of the Attorney General, and Mr. Edgar Penwell, chief of the claims section of the Attorney General's office, both denied that the checks were accepted under any such condition. The Board finds that the respondent again issued checks in payment of a debt and did not have or provide sufficient funds in his account to pay the same when presented for payment by the payee. Such conduct does violate Canons 29 and 32 of the Canons of Professional Ethics.

RECOMMENDATION

On December 5, 1962, the Supreme Court of this state administered a public reprimand to the respondent based upon a report of this Board which found in part as follows:

"* * * That respondent by the careless handling of business affairs of his office as an attorney at law in the handling of collections and his negligence in accounting therefor and by his persistent habit of writing and uttering checks on his various checking accounts, both personal and business, knowing that he did not have sufficient funds to cover them, has been guilty of practice tending to bring the legal profession into disrepute contrary to Canons 29 and 32 of the Canons of Professional Ethics."

In view of this previous reprimand and the foregoing Findings and Conclusions in respect to Charges 1, 3, 4, 5, 6 and 7, the Board finds that the respondent has been guilty of misconduct as defined in Paragraph 5 (a) of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio.

It is the recommendation of the Board that respondent be suspended for an indefinite period from the practice of law as provided in Paragraph 6 (b) and Paragraph 7 of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio.

/s/ KARL H. WEANER
Chairman, Board of Commissioners on Grievances and Discipline

/s/ WILLIAM D. RADCLIFF
Secretary, Board of Commissioners on Grievances and Discipline

APPENDIX "D"

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX "E"

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

APPENDIX "F"

Amendment XIV

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "G"

RULE XVIII[2]

Disciplinary Procedure

Pursuant to the powers of this Court over the Bar of this State and the members therof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(5) DEFINITIONS.

(a) MISCONDUCT. Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

(b) MENTAL ILLNESS. Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

(6) MANNER OF DISCIPLINE. Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

(7) EFFECT OF DISCIPLINE. A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license

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[2] Same as former Rule XXVII as amended March 11, 1964.

to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(10) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(13) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses in-

curred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) Review by Entire Board of Commissioners; Board to Administer Private Reprimand. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) RESPONSE TO ORDER TO SHOW CAUSE AND OBJECTIONS. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

APPENDIX "H"

Canons of Professional Ethics

"29. Upholding the Honor of the Profession. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character

or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

"32. The Lawyer's Duty in its Last Analysis. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."